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**IN THE  
COURT OF APPEALS OF INDIANA**

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FRANK L. GRAY,	)	
	)	
Appellant-Plaintiff,	)	
	)	
vs.	)	No. 45A03-0606-CV-234
	)	
PATRYK KOSOW, GEORGE KOSOW,	)	
and K. TRONIX,	)	
	)	
Appellees-Defendants.	)	

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APPEAL FROM THE LAKE SUPERIOR COURT  
The Honorable Kathleen Belzeski, Magistrate  
Cause No. 45D08-0510-SC-5792

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**April 25, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BAILEY, Judge**

## **Case Summary**

Pro-se Appellant-Plaintiff Frank Gray (“Gray”) appeals a small claims court judgment ordering Appellees-Defendants Patryk Kosow (“Patryk”) and K. Tronix to pay Gray \$281.84 for damage to Gray’s vehicle and finding Appellee-Defendant George Kosow (“Kosow”) not liable for damages to Gray. We affirm.

## **Issues**

Gray raises five issues, which we consolidate and restate as the following three issues:

- I. Whether he was denied due process;
- II. Whether the damages are inadequate; and
- III. Whether the evidence established that Kosow was liable for damages to Gray.

## **Facts and Procedural History**

During the early afternoon of March 10, 2005, a snowy day, Patryk was traveling on Kennedy Avenue in Hammond, Indiana. He was driving home from college in a truck he used with the permission of his father, Kosow. K. Tronix, a business operated by Kosow, was the registered owner of the truck.

As Patryk approached Interstate 80 via an on-ramp, he noticed a 1992 Chevy Malibu stopped on the shoulder of the road. There were tire tracks in the snow leading toward a concrete wall, and Patryk assumed that the Chevy had hit the wall. Patryk applied his brakes to slow his vehicle, but it began to slide. Patryk turned his steering wheel to the left, and his truck “nicked” the Chevy on its rear driver’s side. (Tr. 50.) Patryk “straightened out” his vehicle, but the rear of the truck hit the Chevy a second time. (Tr. 50.)

Patryk regained control of his vehicle and parked it. He briefly spoke with Chelsea Wilkins (“Wilkins”), the driver of the Chevy, and was assured that she was not physically injured. Patryk and Wilkins then made some brief telephone calls using Patryk’s cellular phone. After about five minutes, Wilkins screamed and Patryk looked up to see a white truck “speeding down the on ramp [and] losing control.” (Tr. 63.) Wilkins and Patryk ran to safety. The truck collided with the Chevy, pushing it off the ramp, down a bank, and into a ditch. The driver of the white truck did not stop.

K. Tronix had insured the vehicle that Patryk was driving through State Farm Insurance (“State Farm”). State Farm assessed the damages to the Chevy, which was actually owned by Gray,<sup>1</sup> and determined that repairs would exceed the market value of the vehicle. It was considered “totaled.” However, State Farm did not offer Gray the full value of his totaled vehicle. Because of the hit-and-run incident, State Farm disputed that its insured had caused the entirety of the damages to Gray’s vehicle.

On November 2, 2005, Gray filed a small claims Notice of Claim in the Lake Superior Court, naming Patryk, Kosow and K. Tronix as defendants. Gray was denied leave of court to file a third-party claim against State Farm. In hearings conducted on January 5, 2006, and on February 16, 2006, the trial court addressed discovery disputes, quashed some subpoenas issued by Gray, and granted Gray a continuance to pursue discovery. The matter was tried on April 5, 2006.

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<sup>1</sup> On October 15, 2004, Gray had filed a “Complaint for Replevin and Damages” against Wilkins, alleging that she had unlawfully detained his vehicle. (App. 21.)

The small claims court entered a judgment for Gray and against Patryk and K. Tronix in the amount of \$281.84. The trial court found in favor of Kosow on the claim against him. Gray now appeals.

## **Discussion and Decision**

### **I. Due Process**

#### **A. Standard of Review**

The claim was tried before the bench in small claims court. Indiana Small Claims Rule 8(A) provides: “The trial shall be informal, with the sole objective of dispensing speedy justice between the parties according to the rules of substantive law, and shall not be bound by the statutory provisions or rules of practice, procedure, pleadings or evidence except provisions relating to privileged communications and offers of compromise.”

We review for clear error. Flint v. Hopkins, 720 N.E.2d 1230 (Ind. Ct. App. 1999). We presume the trial court correctly applied the law. Barber v. Echo Lake Mobile Home Comm., 759 N.E.2d 253, 255 (Ind. Ct. App. 2001). Additionally, we give due regard to the trial court’s opportunity to judge the credibility of the witnesses, and do not reweigh the evidence, but consider only the evidence and reasonable inferences therefrom that support the trial court’s judgment. Id. A deferential standard of review is particularly appropriate in small claims actions, where trials are informal, with the sole objective of dispensing speedy justice according to the rules of substantive law. Id.

#### **B. Analysis**

Gray contends that he was denied procedural due process because his subpoenas were quashed, discovery was limited, and he was ordered not to file successive discovery motions.

As best we can discern Gray's argument, he alleges that the trial court permitted the Defendants to be selective and deceptive in the provision of discovery materials. Gray apparently believes that full disclosure of all documents possessed by State Farm would reveal damage estimates above \$281.84.

Indiana Small Claims Rule 6 provides: "Discovery may be had in a manner generally pursuant to the rules governing any other civil action, but only upon the approval of the court and under such limitations as may be specified. The court should grant discovery only upon notice and good cause shown and should limit such action to the necessities of the case."

Here, the trial court quashed Gray's subpoenas to Patryk, Kosow and State Farm because the requisite prior approval had not been obtained and Gray sought evidence of settlement negotiations. Nevertheless, the trial court permitted other discovery to proceed, and Gray was provided answers to interrogatories, six photographs of his wrecked vehicle, a certificate of insurance coverage, two Indiana Officers Standard Crash Reports, a State Farm damage estimate, and a redacted activity log summarizing a telephone conversation between a State Farm representative and Wilkins. The activity log also included a summarized statement from Wayne Lockery to the effect that the hit-and-run vehicle totaled Gray's vehicle and the damage caused by Patryk would not affect the salvage value. The trial court examined other requested materials and found them to be privileged. The trial court also found that some evidence of valuation sought by Gray was not in existence, because it was oral rather than recorded.

The thrust of Gray's argument appears to be that he was denied due process because the products of discovery did not include damage estimations more favorable to him.

However, Small Claims Rule 6 provides that discovery in small claims matters is not an absolute right, but is within the discretion of the trial court. Gray was allowed to conduct substantial discovery given the nature of the case as a small claim. Moreover, the trial court did not deny Gray the opportunity to obtain and offer independent evidence of damages.<sup>2</sup> He has not established that the trial court improperly limited discovery beyond the necessities of the case.

## II. Amount of Damages

Next, Gray challenges the award of damages as inadequate. The trial court awarded Gray \$281.84, the precise total of damages suggested by State Farm's adjuster. Gray complains that the trial court "all but disregarded Patryk's estimate of \$2000 damage of the first impact." Appellant's Brief at 22.

Indiana follows the general tort principle that all damages directly attributable to the wrong are recoverable by the victim. Childress v. Buckler, 779 N.E.2d 546, 550 (Ind. Ct. App. 2002). Despite the informality of the proceedings, the parties in a small claims court bear the same burdens of proof as they would in a regular civil action on the same issues. LTL Truck Service, LLC v. Safeguard, Inc., 817 N.E.2d 664, 668 (Ind. Ct. App. 2004). Although "the method of proof may be informal, the relaxation of evidentiary rules is not the equivalent of relaxation of the burden of proof." Id. Thus, it remains incumbent upon the party who bears the burden of proof to demonstrate that it is entitled to the recovery sought.

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<sup>2</sup> Because Wilkins could not be located, and did not testify, Gray relied upon Patryk's estimate as to how much damage he caused, and upon a police officer's checkmark on a form estimating the damage to be above \$1,000.00. Gray also offered an estimate of the entire value of his vehicle, not apportioning damages between the separate incidents.

Id. The burden of proof with respect to damages is with the plaintiff. Id. (citing Noble Roman's, Inc. v. Ward, 760 N.E.2d 1132, 1140 (Ind. Ct. App. 2002)).

Our review of an award of damages is limited. We do not reweigh the evidence or judge the credibility of witnesses, and will reverse an award only when it is not within the scope of the evidence before the finder of fact. Collections, Inc. v. Wolfe, 818 N.E.2d 14, 16 (Ind. Ct. App. 2004).

Gray essentially requests that we reweigh conflicting damage estimates and adopt the one most favorable to him. This we cannot do. Nor can we assess damages against Patryk not attributable to him, so that Gray could replace his totaled vehicle. The award of \$281.84 is within the scope of the evidence presented to the trial court. Therefore, it will not be disturbed upon appeal.

### III. Judgment in favor of Kosow

Finally, Gray argues that he is entitled to a judgment against Kosow. Gray had the burden of proof at trial on his negligence claim against Kosow, and thus he appeals from a negative judgment. When a party appeals from a negative judgment, we will reverse only if the decision of the trial court is contrary to law. LTU Truck Service, 817 N.E.2d at 667. A decision is contrary to law if the evidence and reasonable inferences to be drawn therefrom lead to but one conclusion and the trial court has reached a different one. Id.

In order to prevail on a claim of negligence the plaintiff must show: (1) duty owed to plaintiff by defendant; (2) breach of duty by allowing conduct to fall below the applicable standard of care; and (3) compensable injury proximately caused by the defendant's breach of duty. Williams v. Cingular Wireless, 809 N.E.2d 473, 476 (Ind. Ct. App. 2004), trans.

denied. Here, Gray did not produce evidence to show that Kosow breached a duty owed to Gray, or caused him injury. Therefore, the trial court's judgment in favor of Kosow is not clearly erroneous.

### **Conclusion**

Gray was not denied procedural due process. The award of damages was within the evidence presented to the trial court. Finally, the trial court did not err in finding for Kosow upon Gray's negligence claim against him.

Affirmed.

SHARPNACK, J., and MAY, J., concur.